

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**TONY L. WARE, CEO and  
T. L. WARE BOTTLING  
COMPANY, INC.**

**Plaintiffs,**

**v.**

**FLEETBOSTON FINANCIAL  
CORP.,  
f/k/a BANKBOSTON CORP.,**

**Defendant.**

**Civil Action File  
No. \_\_\_\_\_**

**NOTICE OF REMOVAL OF CIVIL ACTION**

FleetBoston Financial Corporation, the sole named defendant in the civil action styled Tony L. Ware, CEO and T. L. Ware Bottling Company, Inc. v. FleetBoston Financial Corp., f/k/a BankBoston Corp., Civil Action File No. 2004-CV 94553, in the Superior Court of Fulton County, State of Georgia (the "State Court Action"), files this Notice of Removal of the State Court Action to the United States District Court for the Northern District of Georgia, Atlanta Division, and shows the Court as follows:

## **I. INTRODUCTION**

FleetBoston Financial Corporation ("FBC(Del)") is a dissolved Delaware corporation that first received a copy of the initial pleading in this case on February 8, 2005. Contrary to Plaintiffs' statements in state court, FBC(Del) has never been served with process and is not subject to personal jurisdiction in Georgia. Despite no service on FBC(Del), no jurisdiction, and that Plaintiffs previously litigated and lost the issues raised in their current complaint, Plaintiffs have deceptively obtained an improper judgment in excess of \$900 million.

The complaint alleges that FBC(Del) is a foreign corporation and, in fact, FBC(Del) was organized and dissolved pursuant to the laws of the State of Delaware. (Comp., ¶ 4, Affidavit of Martha R. Francis concurrently filed in original and copied hereto as Exhibit A ("Francis Aff.") at ¶¶ 3, 5). As Plaintiffs are Georgia citizens, FBC(Del) removes this case pursuant to 28 U.S.C. § 1332 for reason of diversity. In addition, Plaintiffs' complaint references federal statutes that, if such allegations are not frivolous, give rise to federal question jurisdiction under 28 U.S.C. § 1331. FBC(Del) makes special appearance to file this notice and specifically reserves all defenses and objections, including but not limited to improper service and lack of personal jurisdiction.

## **II. DEFENDANT'S BASIS FOR REMOVAL**

This Notice of Removal of Civil Action is timely filed pursuant to 28 U.S.C. § 1446(b) because it is being filed well within the statutorily allowed thirty-day period after the date that FBC(Del) first received a copy of the initial pleading in this action. The State Court Action may be removed to this Court because it is an action involving a controversy between citizens of different states and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs such that the district courts of the United States have diversity jurisdiction pursuant to 28 U.S.C. § 1332. Therefore, the State Court Action may be removed to this Court pursuant to 28 U.S.C. § 1441(a) and (b). Moreover, to the extent Plaintiffs' allegations under 18 U.S.C. § 1964 (RICO), 18 U.S.C. § 1832 (Trade Secrets Act) and 18 U.S.C. § 641 (Mail Fraud) are not frivolous, this Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331. This action is removable to this particular Court because this District and Division embrace the place where the State Court Action is pending. See 28 U.S.C. § 1441(a)

### **A. Diversity of Citizenship**

Plaintiffs Tony L. Ware, CEO and T. L. Ware Bottling Company, Inc. ("Plaintiffs") are residents and citizens of the State of Georgia. (Compl., ¶¶ 2-3). FBC(Del), as alleged in the Complaint, is a foreign corporation. (Compl., ¶ 4)

FBC(Del) was organized and dissolved pursuant to the laws of the State of Delaware and maintained its principal place of business in Delaware. (Francis Aff., ¶¶ 3, 5). As a result, FBC(Del) is located in Delaware and is a citizen of Delaware for purposes of assessing diversity jurisdiction. See 28 U.S.C § 1332(c). The parties thus are completely diverse.

**B. Amount in Controversy**

Plaintiffs allege entitlement to damages in excess of \$170,000.00. (Compl , ¶ 15). Thus, the \$75,000.00 minimum jurisdictional requirement of 28 U.S.C. § 1332 is well exceeded.

**C. Other Statutory Requirements**

Promptly after filing this Notice of Removal, written notice of this filing will be given to Plaintiffs and a copy of this Notice of Removal will be filed with the Superior Court of Fulton County, State of Georgia. Out of an abundance of caution, promptly after filing this Notice of Removal, FBC(Del) will attempt to file a copy of this Notice with the Clerk for the Court of Appeals of the State of Georgia and the Clerk for the Supreme Court of Georgia. Copies of the Notice to Plaintiffs of Removal of State Court Action, the Notice to State Court Clerk of Filing of Notice of Removal, the Notice to the Clerk for the Court of Appeals for the State of Georgia, and the Notice to Clerk for the Supreme Court of Georgia are

attached hereto as Exhibit B. Although FBC(Del) has not received any proper service of process in this action, Exhibit C attached hereto contains copies of all process, orders, or pleadings retrieved by FBC(Del)'s counsel from the Fulton County Superior Court

By filing this Notice of Removal, FBC(Del) does not waive any defense that may be available to it, including, but not limited to that personal jurisdiction is not proper in this state or that service or process was insufficient

### **III. RELIEF REQUESTED**

WHEREFORE, Defendant respectfully requests that the State Court Action be removed to the United States District Court for the Northern District of Georgia, Atlanta Division

This 15<sup>th</sup> day of February, 2005.

Respectfully submitted,

**PARKER, HUDSON, RAINER & DOBBS LLP**

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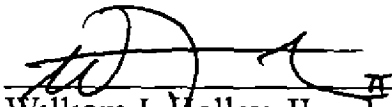
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the within and foregoing **NOTICE OF REMOVAL OF CIVIL ACTION** upon all parties to this matter by causing to be deposited in the U.S. Mail, proper postage prepaid, a true copy of same addressed as follows:

Michael R. Johnson, Sr. (**also served via courier**)  
Johnson & Associates, P C.  
340 West Peachtree Street, N E  
Suite 200  
Atlanta, Georgia 30308

Dr. Tony L Ware, PhD, JD  
Post Office Box 150524 - Dept. 0227  
Atlanta, Georgia 30315

This 15<sup>th</sup> day of February, 2005

  
William J. Holley, II


**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the within and foregoing **NOTICE TO PLAINTIFFS OF REMOVAL OF CIVIL ACTION** upon all parties to this matter by causing to be deposited in the U.S. Mail, proper postage prepaid, a true copy of same addressed as follows:

Michael R. Johnson, Sr (**also served via courier**)  
Johnson & Associates, P.C.  
340 West Peachtree Street, N.E.  
Suite 200  
Atlanta, Georgia 30308

Dr. Tony L. Ware, PhD, JD  
Post Office Box 150524 - Dept. 0227  
Atlanta, Georgia 30315

This 15<sup>th</sup> day of February, 2005.

  
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William J. Holley, II